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IN THE

Supreme Court of the United States

October Term, 1962

No. 477

CITY OF PHILADELPHIA,

Petitioner,

against

RALPH COHEN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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No.

CITY OF PHILADELPHIA,

Petitioner,

against

RALPH COHEN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York entered in the above-entitled case on July 6, 1962, affirming a judgment dismissing the complaint.

Opinions Below

The majority opinion of the Court of Appeals and the dissenting opinion of Judge Fuld (Appendix C, *infra*, pp. App. 5-11) are reported in 11 N. Y. 2d 401, 184 N. E. 2d 167. The majority of the Appellate Division, First Department rendered no opinion; the minority opinion (R. 46-52) is reported in 15 App. Div. 2d 464, 222 N. Y. S. 2d 226. The opinion of the Supreme Court, New York County (R. 38-39) is not reported.

Jurisdiction

The judgment of the Court of Appeals (R. 2A-2D; Appendix B, *infra*, pp. App. 2-4) was dated and entered on July 6, 1962. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3).

Questions Presented

1. Where a binding and conclusive administrative determination of liability for business taxes has been reached in accordance with due process of law against a then resident of Pennsylvania who was operating a business there, which determination is *res judicata* and incontestable in the courts of Pennsylvania, and respondent moved to New York before judgment could be entered in Pennsylvania, does the Full Faith and Credit Clause of the Federal Constitution require the courts of New York to accord to the administrative determination "the same full faith and

credit * * * as [it has] by law or usage in the courts of such State * * * from which [it is] taken.'"*

2. Even in the absence of a conclusive administrative determination of tax liability, may the courts of a state, consistently with full faith and credit requirements of the Constitution and laws of the United States, close their doors to a suit to collect moneys due and owing under the revenue laws of a sister state, for the sole reason that the claim is one for taxes rather than to enforce another kind of liability.

Constitutional and Statutory Provisions Involved

The pertinent provisions of the Constitution and statutes of the United States are set forth in Appendix A, *infra*, p. App. 1.

Statement

This is an action to recover gross receipts taxes which respondent failed to pay to the City of Philadelphia, a municipality of the State of Pennsylvania. The taxes were assessed in accordance with applicable municipal ordinances (R. 17-37) and after examination and audit, at a time when respondent was a resident of the City of Philadelphia and engaged in business there as a public parking lot operator (R. 12-14). No contention going to the validity or propriety of the assessment was raised below.

Although he was duly notified of the assessment, as the ordinance required, respondent filed no petition to review,

* 28 U. S. C. §1738, Appendix A, *infra*, p. App. 1.

as permitted by the Tax Review Board Ordinance (R. 14, 21-27). Thereupon, under Pennsylvania law, the assessment became binding and conclusive and respondent's liability for the amount assessed became *res judicata* (*infra*, p. 6). Before judgment could be entered, however, respondent left Pennsylvania and became a resident of New York (R. 12). It was no longer possible to effect service upon respondent within Pennsylvania.

Petitioner took recourse, therefore, to the courts of the only state in which it was practicable to obtain personal jurisdiction over respondent; it commenced this action in the Supreme Court of the State of New York (R. 12-16). Respondent moved to dismiss the complaint upon the ground that New York courts lacked jurisdiction over the subject of an action to collect moneys payable under foreign revenue laws (R. 11). In opposing the motion, and upon appeals to the Appellate Division, First Department and to the Court of Appeals from a judgment dismissing the complaint, petitioner urged in its memoranda and briefs that under the Constitution and laws of the United States both the assessment and the public act of Pennsylvania under which it was made were entitled to the same full faith and credit in the courts of New York as they had by law in the courts of "the State * * * from which they are taken."

The Supreme Court dismissed the complaint on comity grounds (R. 38-39). A majority of the Appellate Division affirmed without opinion (R. 44-52). Both the majority and minority opinions of the Court of Appeals expressly passed upon the full faith and credit point and recognized that the problem involved questions of first impression

expressly left open by this Court (Appendix C, *infra*, pp. App. 5-11). The majority concluded that New York was not required to entertain the suit (*ibid.*, App. p. 8). Judge Fuld, dissenting, held that a final and binding administrative determination of tax liability did not differ from a judgment for full faith and credit purposes and was either a "public Act" or a "Record" within the meaning of Article IV, Section 1 of the Constitution (*ibid.*, pp. App. 10-11).

Reasons for Granting the Writ

1. The decision below is in basic conflict with the rationale of pertinent decisions of this Court and presents vital questions which have not been, but should be, decided by this Court. Those questions are of great importance to thousands of taxing authorities throughout the United States (*infra*, pp. 9, 11).

Administrative determinations which validly adjudicate tax liabilities in one state with incontestable finality should be entitled to equal weight in every state of the Union. They should not be subject to practical nullification at the whim of a court sitting in another state which has competence to enforce them but regards them as "penal" in nature or otherwise engages in thinking inconsistent with modern tax structures and necessities of government.

This case does not involve merely the question whether one state must enforce the revenue laws of another. The New York courts were not requested or required to engage in a "scrutiny of [Philadelphia's] revenue laws or of relations established by those laws with its citizens."

Milwaukee County v. *White Co.*, 296 U. S. 268, 276-278. Nor were those courts asked "to sit in judgment on a tax controversy between another State and its present or former citizens * * *" (Appendix C, *infra*, p. App. 8).

Under Pennsylvania law, the administrative assessment became a final and unchallengeable adjudication of petitioner's liability when he failed to exercise his right to appeal. *Philadelphia* v. *Sam Bobman Dept. Store Co.*, 189 Pa. Super. 72 (1959). Thereafter, judicial enforcement of the assessment in the Pennsylvania courts would require no scrutiny of any revenue laws; there was, in fact, no longer any "tax controversy" since petitioner's liability for a sum certain was *res judicata*. In the words of the dissenting opinion below, the determination had, "in essence, the same force and effect as a judgment." (Appendix C, *infra*, p. App. 10).

Administrative determinations of this nature are entitled to full faith and credit under the rationale of *Milwaukee County* v. *White Co.*, *supra*. While it may not be a "Judicial Proceeding", the final determination here involved is certainly a "public Act" or "Record" of the State of Pennsylvania and it, and others like it, are entitled to receive "the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such State * * * from which they are taken". 28 U. S. C. §1738.

In *Broderick* v. *Rosner*, 294 U. S. 629, the New York Superintendent of Banks brought an action in New Jersey to recover unpaid assessments from stockholders of a New York bank who were residents of New Jersey. Conditions

precedent to suit imposed by a statute of the forum state in effect barred the action. This Court rejected an argument identical with that accepted by the court below in the case at bar, namely, that full faith and credit requirements did not apply because the out-of-state assessment was not reduced to judgment. The Court said (294 U. S. at 644):

> "The fact that the assessment here in question was made under statutory direction by an administrative officer does not preclude the application of the full faith and credit clause."

Workmen's compensation awards, likewise administrative in nature, have also been held entitled to the same full faith and credit in every court sitting within the United States as they have by law or usage in the courts of the states from which they are taken. *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430.

The precise question involved in the instant case was decided by Judge Wyzanski in *City of New York* v. *Shapiro*, 129 F. Supp. 149 (D. Mass. 1954). There an administrative determination of tax liability by the treasurer of New York City was held entitled to full faith and credit by reason of its finality. The court pointed out that the taxpayer had not availed himself of the judicial review provided by the New York Civil Practice Act. Since the administrative determination was not subject to further challenge, it had become "a final, binding and new obligation" which was *res judicata* and the original tax obligation had "merged in the obligation expressed in the determination" (129 F. Supp. at 153). The court said (*ibid.* at 154):

"* * * administrative determinations, if they create in their home state new obligations, and if those new obligations are enforceable by independent suit or by process equally effective, can be sued upon in a sister state. See R. H. Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, XLV Col. L. Rev. 1, 15.

"Nor can it be justly said that there is some reason of policy for distinguishing between a State's duty to give effect to a sister State's court judgment for taxes and its duty to give effect to a sister State's binding administrative determination of taxes. Every consideration recited by Mr. Justice Stone, 296 U. S. at pages 276-277 of the *Milwaukee County* case applies equally to suits on judgments and suits on determinations."

The principles here involved transcend in importance the question whether one state may, by closing the doors of its courts, offer a haven to one who has been finally adjudicated to be liable for taxes to another state and thus confer "immunity" upon a "tax evader" (R. 52), although that aspect of the matter is in itself of grave importance to taxing authorities throughout the nation. If the decision below is sound, final and binding determinations by a variety of established administrative agencies may be subject to evasion by the mere act of fleeing the jurisdiction if competent courts that sit in the state of asylum do not care to enforce the type of liability involved. The decision below is entirely contrary to

"* * * the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or

rights created or recognized by the statutes of sister states * * *." *Hughes* v. *Fetter*, 341 U. S. 609, 612.

2. If this action be viewed as a claim under a Pennsylvania statute, rather than as a suit to enforce the tax assessment *qua* assessment, the decision below is still erroneous and raises significant questions which this Court should resolve. The court below decided in the negative the question expressly left open in *Milwaukee County* v. *White Co., supra*, 296 U. S. at 275, whether a state is required by the Full Faith and Credit Clause to entertain actions to enforce the revenue laws of another state. This negative answer is a serious detriment to the thousands of taxing authorities which, in the discharge of the indispensable duties of government in this country, constantly suffer large losses of needed revenues payable by departing residents who do not hesitate to throw the burden of their delinquency upon their former neighbors. This Court should speak with finality on this open, and recurring, question of extensive public importance.

The municipal tax ordinance here involved is clearly a "public Act" within the meaning of Article IV, Section I of the Constitution. It was enacted by the City of Philadelphia pursuant to express authorization by the Pennsylvania legislature. *Addison Case*, 385 Pa. 48, 122 A. 2d 72 (1956); see Appendix C, *infra*, p. App. 8. The ordinance is a valid exercise of the state taxing power by its creature, the City of Philadelphia. *Philadelphia* v. *Samuels*, 338 Pa. 321, 12 A. 2d 79 (1940); *Philadelphia* v. *Eglin's Garage*, 342 Pa. 142, 19 A. 2d 845 (1941).

Each state has a "constitutional obligation to enforce the rights and duties validly created under the laws of

other states * * *." *Hughes* v. *Fetter*, 341 U. S. 609, 611; *First National Bank* v. *United Air Lines*, 342 U. S. 396. Whether "the simple device of removing jurisdiction from courts otherwise competent" (*Hughes* v. *Fetter*, *supra*, 341 U. S. at 611) is accomplished by legislative mandate or judicial fiat, "local policy" cannot exclude actions under the statutes of other states except for reasons of cogency; "* * * the room left for the play of conflicting policies is a narrow one". *Broderick* v. *Rosner*, *supra*, 294 U. S. at 642, 643. And here New York "has no real feeling of antagonism" (*Hughes* v. *Fetter*, *supra*, 341 U. S. at 612) against gross receipts taxes; such taxes constitute an established and accepted part of the tax structure of New York's own municipalities. See Appendix C, *infra*, p. App. 8. The suit instituted by petitioner raised no necessity for the court below to choose between the Pennsylvania statute and a competing law of the forum. Nor does the Pennsylvania act impose penal obligations to which legitimate objections could arise on the part of a court sitting in another state. *Milwaukee County* v. *White Co.*, *supra*, 296 U. S. at 271; see *Converse* v. *Hamilton*, 224 U. S. 243, 261.

Especially where, as here, the tax claim arises in such a way that the court in which enforcement is sought need not interpret the revenue law itself or expose itself to the other possible forms of "embarrassment" discussed in *Milwaukee County* v. *White Co.*, *supra*, the Court's statement there that "* * * no state may be said to have a legitimate policy against payment of its neighbor's taxes * * *" (296 U. S. at 277) is apposite. Certainly, the opinion of the court below enunciates no New York policy of

gravity or importance; the court simply objected to the enforcement of tax claims, as distinguished from other liabilities.

And if "the play of conflicting policies" is to be considered (*Broderick* v. *Rosner, supra,* p. 10), the decision of the court below still cannot stand. The public policy of the State of Pennsylvania to permit its municipalities and other taxing authorities to support themselves by levying taxes in a lawful way upon persons who live and carry on business within their boundaries would seem to be far weightier than the Court of Appeals' aversion to tax liabilities. The essentiality of public revenues to the discharge of the functions of government, the heavy reliance by local government upon taxes such as the one here involved, and the ready means of escape and evasion opened by the decision below, all argue strongly for review and reversal.

The prevailing opinion below equates New York's obligations under the Full Faith and Credit Clause with a court's voluntary choices under principles of comity. The court spoke of Pennsylvania's revenue acts in the same vein as those it would use to refer to laws of a foreign country. The court concluded that it was free to indulge its own distaste for a particular kind of claim advanced under a statute of another state. A local policy so lacking in substance "must give way" to more fundamental and significant obligations of New York as a member of the Federal Union. *Hughes* v. *Fetter, supra,* 341 U. S. at 612.

Conclusion

For the foregoing reasons it is respectfully submitted that this Court should issue its writ of certiorari to review the decision below.

Respectfully submitted,

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October 1, 1962

APPENDIX A

Constitutional and Statutory Provisions

Article IV, Section 1, of the Constitution of the United States:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

28 U. S. C. 1738:

> "* * * Such Acts, records and judicial proceedings * * * shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

APPENDIX B

Judgment of the Court of Appeals of the State of New York

COURT OF APPEALS

STATE OF NEW YORK, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall in the City of Albany, on the 6th day of July in the year of our Lord one thousand nine hundred and sixty-two, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk

Remittitur July 6, 1962.

Appendix B

1 No. 140

CITY OF PHILADELPHIA,
Appellant,

vs.

RALPH COHEN,
Respondent.

BE IT REMEMBERED, That on the 31st day of March in the year of our Lord one thousand nine hundred and sixty-two, City of Philadelphia, the appellant—in this cause, came here unto the Court of Appeals, by Mortimer B. Wolf, its attorney—, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Ralph Cohen, the respondent—in said cause, afterwards appeared in said Court of Appeals by Wolf, Haldenstein, Adler & Freeman, his attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Mortimer B. Wolf, of counsel for the appellant—, and by Mr. Lewis J. Mendelson, of counsel for the respondent—, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

/s/ RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 6, 1962

[SEAL]

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

/s/ RAYMOND J. CANNON
Clerk.

APPENDIX C

Majority and Dissenting Opinions of the Court of Appeals of the State of New York

STATE OF NEW YORK

COURT OF APPEALS

1 No. 140

CITY OF PHILADELPHIA,
Appellant,

vs.

RALPH COHEN,
Respondent.

DESMOND, Ch. J.:

We have for decision a question not previously answered by this court or, apparently, by any Federal appellate court or State court of last resort: does the Full Faith and Credit requirement of the Federal Constitution (art. IV, § 1) require the courts of a State to entertain an action brought to enforce a defendant's alleged liability, not reduced to judgment, under the tax laws of another State? Both courts below answered "no". Special Term cited *Wayne County* [*Mich.*] v. *American Steel Export Co.* (227 App. Div. 585) which in turn followed *State of Colorado* v. *Harbeck* (232 N. Y. 71) in stating a policy of our State not to enforce the revenue statutes of other States. However, there was in *State of Colorado* v. *Harbeck* no reliance on or

argument from the Full Faith and Credit Clause and the decision went off on questions of comity and public policy.

The Appellate Division majority, affirming Special Term, wrote no opinion but the two justices who dissented discussed the principle or supposed principle that one State will not allow its courts to serve as forums for the collection of another State's taxes, and quoted the dictum from *Marshall* v. *Sherman* (148 N. Y. 9, 25) repeated in *State of Colorado* v. *Harbeck* (232 N. Y. 71, 85, *supra*) that "the revenue laws of one country have no force in another." The dissenters thought that such a rule, if it existed, has no longer any sound basis in public policy and that no right purpose is served by providing immunity for a tax evader who has left his own State for ours. It is certain, however, that there is such a policy pursuant to which our State has barred suits to collect the taxes of other States and that the rule was born of or is related to the idea that the obligation of a tax is "penal in character" (see *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 292). This concept of the "penal" character of tax levies was rejected in *Milwaukee County* v. *White Co.* (296 U. S. 268) which classified tax liabilities as being statutory and quasi-contractual in nature, but the *Milwaukee County* case did not answer the question posed by this appeal. The Supreme Court in the *Milwaukee County* case arrived at the definite conclusion that "a judgment is not to be denied full faith and credit in State and Federal courts merely because it is for taxes" (296 U. S., p. 279). Just as it had done in *Moore* v. *Mitchell* (281 U. S. 18, 24) the Supreme Court left undecided whether the Federal Constitution required the courts of one State to enforce non-judgment liabilities under the tax laws of another State. The Supreme Court said that for the purposes of that (*Milwaukee County*) case it would "assume that the courts of one state are not required to entertain a suit to recover taxes levied under the statutes

of another" (296 U. S., p. 275). From all of this it follows that no case law authority controls us as to the "Full Faith and Credit" argument.

The judgment for this defendant was entered on the grant of his motion to dismiss the complaint for lack of jurisdiction of subject matter and for failure to state facts sufficient to constitute a cause of action, so we take as true the allegations of plaintiff's pleading. From 1954 to 1959 defendant lived and conducted a public parking lot in Philadelphia, Pennsylvania. During those years there was in effect in Philadelphia local tax ordinances (Philadelphia Code of General Ordinances, Chapter 9-601, subd. 4, and Chapter 19-1200) which required every person conducting such a parking lot to obtain a license, to file a monthly tax return and to pay each month a tax of 10% on the gross receipts of the parking business. Over a period of several years defendant filed monthly returns and made monthly tax payments to the city but an audit showed (apparently there was no hearing) that his actual gross receipts exceeded the amount reported by him. As a result the City of Philadelphia in December 1958 made an assessment against defendant for a total of about $5,000 covering four past years. Notice of the assessment was mailed to and received by defendant. The Philadelphia ordinance (Code of General Ordinances, Chapter 19-1702) allows the filing by an aggrieved taxpayer within sixty days of a petition for a review of any such determination. Defendant neither petitioned for a review nor paid the additional tax but moved out of Philadelphia and is now residing in Nassau County in this State. Plaintiff has not obtained a judgment against defendant in any State.

The complaint contains a second cause of action in which it is asserted that plaintiff "agreed" to pay this tax but it is clear that this does not allege any special contract but merely that plaintiff in applying for and getting a parking lot license agreed to pay the Philadelphia parking lot tax.

Appendix C

We will assume that the Philadelphia taxing ordinance is authorized by the laws of the State of Pennsylvania (see *City of Philadelphia* v. *Samuels*, 338 Pa. 32), that as such it is a "public act" of that State, that since defendant did not seek review of the assessment in suit his liability therefor has become perfect and complete (see *Philadelphia* v. *Bobman*, 189 Pa. Superior Ct. 72) and that the imposition of gross receipt taxes by a municipality is not repugnant to any public policy of our State. It still remains that no case law anywhere requires the courts of New York to entertain this suit, either by compulsion of "Full Faith and Credit" or pursuant to comity or our own public policy.

So far as comity and New York's policy is concerned all the New York decisions say that our courts will not act as collectors of taxes for another State (*State of Colorado* v. *Harbeck*, 232 N. Y. 71, *supra*; *Matter of Martin*, 255 N. Y. 359; *Wayne County* [*Mich.*] v. *American Steel Export Co.*, 277 App. Div. 595, *supra*; *Wayne County* v. *Foster & Reynolds Co.*, 277 App. Div. 1105; *State of Maryland* v. *Turner*, 75 Misc. 9; *Matter of Bliss*, 121 Misc. 774). The two *Wayne County* holdings expressly rejected the "Full Faith and Credit" argument. The reasons for such an attitude are clear and old. For our tribunals to sit in judgment on a tax controversy between another State and its present or former citizens would be an intrusion into the public affairs of another State (see *Moore* v. *Mitchell*, 30 F. 600, 604, affd. on another ground 281 U. S. 18, *supra*). It is an attribute of our State's sovereignty that it may determine for itself whether under its concepts of comity a particular foreign law should or should not be enforced. New York State has in the past always decided against enforcement of foreign tax laws.

Since the Appellate Division's affirmance of the dismissal of this suit, the Legislature has given us new, strong evidence of our State's public policy as to the use of our courts for such purposes. Previously there was one New

Appendix C

York statute only (Tax Law, § 249-t-2) which touched on the subject and that enactment went only so far as to require an accounting executor or administrator to prove payment of any out-of-State death taxes providing the other State had a reciprocal law. But the 1962 Legislature (L. 1962, ch. 677, eff. April 19, 1962) enacted a new article 25 of the State Tax Law. It authorizes suits in courts of other States to collect taxes due this State or its subdivisions. It directs the courts of this State to "recognize and enforce liabilities for taxes lawfully imposed by any other State or a political subdivision thereof, which extends a like comity to this state" and permits the duly authorized officer of any such State or a political subdivision thereof "to sue for the collection of such a tax in the courts of this state." Twenty-seven other States have, so the New York Tax Commission reports, enacted statutes permitting such suits in their courts on such reciprocal bases. Pennsylvania has not so enacted. This definitive legislative pronouncement, of controlling public policy, in itself and regardless of arguments pro and con, forbids the prosecution of this suit.

The judgment should be affirmed, with costs.

Appendix C

FULD, J. (dissenting):

By this action, the City of Philadelphia seeks to recover parking lot taxes, which the defendant, as a parking lot operator in that city, refused to pay. After an audit of the defendant's books and records, the City made an assessment for taxes due. Since the defendant failed, as the applicable statute provided, to appeal to the City's Tax Review Board, this administrative determination constitutes a binding and conclusive adjudication under Pennsylvania law. (See *Philadelphia* v. *Bobman*, 189 Pa. Super. 72.) Following the determination, but before the City had a chance to have its assessment reduced to judgment, the defendant left the State of Pennsylvania.

I agree that the full faith and credit clause (U. S. Const., art. IV, §1) does not require our courts to entertain a cause of action, based on the taxing statutes of another state, to adjudicate and determine an individual's tax liability under the laws of such other state. (See *Milwaukee County* v. *White Co.*, 296 U. S. 268, 275.) However, I am persuaded that the full faith and credit clause compels the courts of New York to entertain the present action. There can be no doubt that, had the defendant's tax liability been formally translated into a judgment, it would have been entitled to full faith and credit, for, then, the tax cause of action would have been merged in the judgment and its enforcement would not involve "scrutiny of [Philadelphia's] revenue laws or of relations established by those laws with its citizens." (*Milwaukee County* v. *White Co.*, 296 U. S. 268, 276-278, *supra.*) The same rule, it seems to me, must be applied in the case before us, for what is here sued upon is not the underlying tax liability, but a final administrative determination that has, in essence, the same force and effect as a judgment.

The Federal Constitution requires our courts to give full faith and credit "to the public Acts, Records, and ju-

dicial Proceedings of every other State" (U. S. Const., art. IV, §1) and the implementing legislation provides that such acts, records—"nonjudicial" as well as judicial—and judicial proceedings "shall have the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such State * * * from which they are taken (28 U. S. C., §§1738, 1739). Whether the administrative determination in the case before us be regarded as a "public Act" or a "Record" within the meaning of the constitutional provision, it is entitled to full faith and credit if arrived at in accordance with due process. (See *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 443; *Broderick* v. *Rosner*, 294 U. S. 629, 646-647; *City of New York* v. *Shapiro*, 129 F. Supp. 149, 154; *Hood* v. *Guaranty Trust Co.*, 270 N. Y. 17, 25-26; see, also, Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Col. L. Rev. 1, 15; Abel, Administrative Determinations and Full Faith and Credit, 22 Iowa L. Rev. 461, 485; Note, 69 Harv. L. Rev. 378.) The policy considerations which led the Supreme Court to hold that a judgment for taxes—a judicial proceeding—is entitled to full faith and credit (see *Milwaukee County* v. *White Co.*, 296 U. S. 268, 276-277, *supra*) are equally applicable. (See *City of New York* v. *Shapiro*, 129 F. Supp. 149, 154, *supra*.) We may not look behind the administrative determination to the underlying tax cause of action since it has been merged in the determination, and the fact that our courts would not have entertained the original cause of action is immaterial. (See, *e.g.*, *Milwaukee County* v. *White Co.*, 296 U. S. 268, 277-278, *supra*; *Fauntleroy* v. *Lum*, 210 U. S. 230; *City of New York* v. *Shapiro*, 129 F. Supp. 149, *supra*.)

I would reverse the judgment and deny the motion to dismiss the complaint.

* * * * *

Judgment affirmed, with costs. Opinion by Desmond, Ch.J. All concur except Fuld, J., who dissents in an opinion.